**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929**

**WP(C).No. 28664 of 2007(K)**

**L.A.R.NO.37/2002 OF SUB COURT, HOSDRUG.**

**PETITIONER:**

**B.ANANTHRAYA PRABHU,**
**S/O SEETHARAMA PRABHU,**
**RESIDING AT AYISHA COLONY,**
**KOVVALPALLI IN KANHANGAD VILLAGE,**
**HOSDURG TALUK, KASARGODE DISTRICT.**

**BY ADV. SRI.V.RAJENDRAN,**
**SRI.P.SAMSUDIN.**

**RESPONDENTS:**

1. **THE SPECIAL TAHSILDAR(LA),**
   **KASARAGODE.**

2. **KANHANGAD MUNICIPALITY,**
   **REPRESENED BY ITS SECRETARY,**
   **KANHANGAD.**

**BY GOVT. PLEADER SMT. R. BINDU.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/09/2007,ALONG WITH W.P.(C). NO. 28687/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**M.N.KRISHNAN, J**

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**W.P.(C) Nos.28664 & 28687 OF 2007**

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**Dated this the 27th day of September 2007**

**JUDGMENT**

W.P.(C)No.28664 of 2007 is filed against the judgment passed by the Sub Court, Hosdurg in L.A.R.No.37 of 2002 and the other writ petition is filed against the judgment in L.A.R.No.5 of 2004.

2. Heard Government Pleader also. A perusal of the judgments made by the court below would show that the claimants did not appear before the court and therefore the court answered the reference against the claimants. Unfortunately, petition under Order IX rule 9 had been filed, as if the case had been dismissed for default. It has been reiterated again and again that a land acquisition court is not competent to dismiss the reference for default. So, I am not going in to the details of the order passed under Order IX Rule 9 C.P.C. When a duty is cast upon the land acquisition court to pass an award and its power to dismiss it for default is taken away, there is an imperative direction that the Sub Court shall apply its mind to the facts and circumstances of the case and arrive at an independent decision and find out whether the award granted by the land acquisitioning authority is proper or

not. Or in other words, even in the absence of the claimant the law mandates the court to apply its mind and pass a considered order. In these two cases, it is not so and the court has just recorded the absence of the claimants and therefore answered the reference against the claimants. The said approach is erroneous. Therefore it requires correction under Article 227 of the Constitution of India.

Therefore, I set aside the judgments passed by the Sub Court, Hosdurg in LAR No.37/2002 and LAR No.5 of 2004 and direct it to restore both the references and after affording sufficient opportunity to both sides, dispose of the matter in accordance with law. The said court is also given liberty to consider whether interest has to be granted to the claimants for the period from the date of dismissal of non-prosecution till today.

Writ petitions are disposed of accordingly.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**